

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

<b>MULHOLLAND ENERGY SERVICES, LLC</b>	§	
	§	
<b>Plaintiff,</b>	§	
	§	
<b>v.</b>	§	<b>CIVIL ACTION NO.SA-24-CA-0093-XR</b>
	§	
<b>KLAUS, INC.</b>	§	
	§	
<b>Defendant.</b>	§	

---

**DEFENDANT KLAUS, INC.’S AMENDED NOTICE OF REMOVAL**

---

Defendant Klaus, Inc., (hereinafter, “Klaus”), hereby submits this Amended Notice of Removal of the action from the County Court at Law of Atascosa County, Texas to the United States District Court for the Western District of Texas, San Antonio Division, the District and Division encompassing the state court in which this action is pending pursuant to this Court’s Standing Order Concerning Removed Cases filed January 30, 2024. 28 U.S.C. § 124(a)(1). Klaus invokes this Court’s jurisdiction under the provisions of 28 U.S.C. §§ 1332, 1441, 1446 and removes this action from state court to federal court pursuant to 28 U.S.C. § 1446(a). Pursuant to 28 U.S.C. § 1446(a), Klaus provides the following statement of grounds for removal. In support, Klaus respectfully shows the Court as follows:

**A. STATEMENT OF THE CASE**

1. On December 26, 2023, Plaintiff Mulholland Energy Services, LLC (“Plaintiff” or “MES”) filed its First Amended Petition (the “Petition”), stating that Klaus could be served through the Texas Secretary of State, in the County Court at Law of Atascosa County, Texas, styled *Mulholland Energy Services, LLC v. Klaus, Inc.* and designated as Case No. 23-09-0608-

CVA (the “State Court Action”).<sup>1</sup> In accordance with 28 U.S.C. § 1446(a), a true and correct copy of all process, pleadings and orders received by Klaus from Plaintiff in this State Court Action and those records obtained directly from the Court’s file for this State Court Action are attached hereto as **Exhibit 1**.

2. The Petition alleges that Plaintiff is suing Klaus for a “suit on a sworn account brought pursuant to Rule 185 of the Texas Rules of Civil Procedure.” Petition, ¶ 3.5. For this State Court Action, Plaintiff is seeking a principal balance due of “\$89,097.36, exclusive of interest” and “[r]easonable fees for attorney’s services rendered and to be rendered through trial and appeal . . . [of] \$26,729.20.” Petition, ¶¶ 3.4, 4.1.

3. In support of its claims, Plaintiff alleges that “[i]n the ordinary course of business Plaintiff sold to Defendant one or more items of goods, wares, merchandise, or services, as described, and shown on the invoices attached hereto as Exhibit ‘A’.” Petition, ¶ 3.1 and its attached Exhibit A. Plaintiff alleges that the prices charges were just and true and that the account remains unpaid. *See* Petition, ¶¶ 3.3-3.4. Klaus disputes Plaintiff’s allegations.

## **B. BASIS FOR REMOVAL**

4. Removal of the State Court Action is proper under 28 U.S.C. § 1441. The Court has original jurisdiction over the State Court Action pursuant to 28 U.S.C. § 1332(a), as a civil action between citizens of different states in which the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs.

---

<sup>1</sup> According to online court records, Plaintiff filed its Original Petition on September 28, 2023, and then made three unsuccessful service attempts on Defendant, as evidenced by an Affidavit of Nonservice filed on December 26, 2023. Plaintiff filed its First Amended Petition on December 26, 2023, acknowledging that Defendant had not yet been served and stating its intention to serve Defendant through the Texas Secretary of State.

**I. THERE IS COMPLETE DIVERSITY OF CITIZENSHIP BETWEEN THE PLAINTIFF MES AND DEFENDANT KLAUS.**

5. According to the Petition, Plaintiff MES is a Texas limited liability company. *See* Petition ¶ 2.1. The Petition identifies Plaintiff's address as 10308 West CR 72, Midland, TX 79707. *Id.* This is located in Midland County, Texas. Plaintiff is incorporated in Texas and has its principal place of business in Texas. *See* 28 U.S.C. §§ 1332(c). Based on information and belief, the only member of Plaintiff MES is Mulholland Energy Services Holding Co., LLC ("MES Hold Co."). The only member of MES Hold Co is the manager, Malcolm Mulholland, who resides at 10308 WCR 72, Midland, TX 79707. Residency is prima facie domicile. Based upon information and belief, Malcolm Mulholland is a citizen of the state of Texas. Therefore, MES is a citizen of the state of Texas. *Id.*

6. Defendant Klaus is an Oklahoma corporation—a foreign entity—as the Petition acknowledges. *See* Petition ¶ 2.2. Its address is P.O. Box 1193, Drumright, OK 74030, Creek County, OK. Defendant Klaus is incorporated in Oklahoma and has its principal place of business in Oklahoma. *See* 28 U.S.C. §§ 1332(c). Therefore, Defendant Klaus is a citizen of the state of Oklahoma *Id.*

7. Accordingly, because Plaintiff MES is a citizen of Texas and Klaus is a citizen of Oklahoma, complete diversity of citizenship exists between Plaintiff and Klaus. *See* 28 U.S.C. §§ 1332(a) and 1441(b).

**II. THE AMOUNT IN CONTROVERSY EXCEEDS \$75,000.00**

8. The amount in controversy, exclusive of interest and costs, must exceed \$75,000.00. *See* 28 U.S.C. § 1332(a).

9. Within the Petition, Plaintiff alleges that Klaus failed to pay the balance of \$89,097.36, exclusive of interest on an alleged account between Plaintiff and Klaus. *See* Petition ¶ 3.4.

10. Plaintiff further alleges that attorney fees for services rendered and to be rendered through trial and appeal are at least \$26,729.20. *Id.* ¶ 4.1.

11. Accordingly, the amount in controversy in the State Court Action exceeds \$75,000.00, as required. *See* 28 U.S.C. § 1332(a).

### **III. THE PROCEDURAL REQUIREMENTS OF REMOVAL ARE SATISFIED**

12. Pursuant to 28 U.S.C. § 1441(a), Klaus is removing this case to the United States District Court for the Western District of Texas, San Antonio Division.

13. The removal is based on complete diversity of citizenship, and the only two parties to the State Court Action are the Plaintiff, a Texas citizen, and the Defendant, an Oklahoma citizen. *See* 28 U.S.C. § 1441(b); *see also* 28 U.S.C. § 1332(a). As stated in the initial pleadings, the amount in controversy exceeds \$75,000. 28 U.S.C. § 1441(c)(2).

14. Venue is proper in the United States District Court for the Western District of Texas, San Antonio Division because it is the district and division embracing the place where the State Court Lawsuit is pending. Local Rules of the United States District Court for the Western District of Texas (eff. April 26, 2023), p. ix (stating that the “SAN ANTONIO DIVISION comprises the following counties: Atacosa . . .”), *available at* <https://www.txwd.uscourts.gov/wp-content/uploads/2023/07/TXWD-Local-Rules-Full-Copy-042623.pdf> (last visited Jan. 23, 2024).

15. The entire State Court Action may be removed to the United States District Court for the Western District of Texas, San Antonio Division. *See* 28 U.S.C. § 1441(c).

16. This Amended Notice of Removal is timely filed pursuant. *See* 28 U.S.C. § 1446(b). Plaintiff's original petition was filed on September 28, 2023, but Plaintiff failed to achieve service on Klaus as acknowledge in its Affidavit of Non-Service, filed on December 26, 2023. The Petition (First Amended Petition) was filed on December 26, 2023, stating that Klaus had not yet been served. Subsequent to December 26, 2023, counsel for Plaintiff and counsel for Defendant Klaus thereafter agreed to accept service of the Petition as of January 2, 2024. *See* EXHIBIT 1, attached hereto, Email between Counsel. The Notice of Removal was filed January 23, 2024 [Dkt. No. 1]. Consequently, less than 30 days had passed since Klaus accepted service. *See* 28 U.S.C. § 1446(b).

17. Klaus is providing Plaintiff with written notice of the filing of this Amended Notice of Removal as required.

18. Klaus is contemporaneously filing a copy of this Amended Notice of Removal and a Notice of Filing of Amended Notice of Removal with the Clerk of the County Court of Atascosa County, State of Texas. *See* 28 U.S.C. § 1446(d).

19. Klaus reserves the right to amend or supplement this Amended Notice of Removal.

### **PRAYER**

WHEREFORE, Defendant Klaus, LLC respectfully requests that this Honorable Court remove the State Court Action styled *Mulholland Energy Services, LLC v. Klaus, Inc.* and designated as Case No. 23-09-0608-CVA, in the County Court at Law of Atascosa County, Texas, to this Federal court.

Respectfully submitted,

**CONNER & WINTERS, LLP**

*s/Ryan Scharnell*

Scott P. Hathaway

OK State Bar No. 13695

Ryan T. Scharnell

OK State Bar No. 30244

4100 First Place Tower

15 East Fifth Street

Tulsa, Oklahoma 74103

Tel. (918) 586-5711 | Fax (918) 586-8547

E-Mail: [shathaway@cwlaw.com](mailto:shathaway@cwlaw.com)

[rscharnell@cwlaw.com](mailto:rscharnell@cwlaw.com)

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the above and foregoing was served on this 13<sup>th</sup> day of February 2024, pursuant to the Federal Rules of Civil Procedure, CM/ECF, to:

Magana & Van Dyke, PLLC

Jason Lee Van Dyke

Texas Bar No. 24057426

1417 E. McKinney St., #110

Denton, TX 76209

P – (940) 382-1976

F – (469) 453-3031

Email: [jason@marsalalawgroup.com](mailto:jason@marsalalawgroup.com)

**ATTORNEY FOR PLAINTIFF**

**MULHOLLAND ENERGY**

**SERVICES, LLC**

*s/Ryan Scharnell*

Ryan T. Scharnell